

The Consolidated Appropriations Act of 2018 (the Act) permanently established income averaging (IA) as a third minimum set-aside election.

**A. The following are federal statutory requirements:**

1. Under Internal Revenue Code (IRC) Section 42(g)(1)(C)(ii)(I) owners designate the income and rent limitation of each unit. These designations must average 60%; owners do not need to maintain an average among tenant household incomes.
2. The designated levels may be only 20%, 30%, 40%, 50%, 60%, 70%, and/or 80% of AMI.
3. The election is irrevocable once made on Form 8609.
4. Under IRC § 42(g)(1)(C)(i) a property is qualified when 40% or more of the total units:
  - are rent restricted to and
  - occupied byhouseholds at or below the limitation designated with respect to the unit.
5. IRC § 42(g)(2)(D)(iii) contains a distinct Next Available Unit Rule (NAUR). Owners should consult with compliance experts on how it will work with market rate units.
6. The 30% AMI level under the Housing Credit is not the same as the Extremely Low-Income restriction under the National Housing Trust Fund. Owners of properties with both sources should be mindful of the difference.

**B. DCA provisions:**

1. Income Averaging and HOME:
  - Developments either awarded before 2018 (including tax exempt bonds awarded under the 2017 QAP) or with a 2018 DCA HOME commitment are ineligible. However, DCA will allow 4% Bond deals with HOME funds to utilize IA if it will prevent the displacement of tenants and the market study demonstrates that 70% and 80% rents are below market rents for the market area.
  - HOME unit designations cannot exceed 60% AMI.
2. DCA will not allow 70% or 80% designations for 9% deals in jurisdictions within the 2019 Rural Pool, where 70% and 80% rents are at or above market rents.
3. Resyndication of properties with a recorded Housing Credit Land Use Restricted Covenant is ineligible. DCA will consider waiver requests so long as any unit to be designated as 70% or 80% is currently market rate or will be newly constructed.
4. All equity providers and lenders must approve the election in writing prior to Carryover Allocation or Letter of Determination.
5. Applicants will designate units at a specific AMI by unit type (e.g., 10 one-bedroom units at 50%) at the time of application.
6. Income limits must be proportionately distributed among bedroom sizes (other than one unit per income limit if necessary due to odd numbers). DCA will consider exceptions to this requirement when necessary to:
  - reduce relocation impact in occupied rehab properties,
  - comply with the requirements of federal project-based assistance, and
  - facilitate HUD 811 units or other forms of supportive housing.

7. Designations can be changed at DCA's discretion.
8. The recorded Land Use Restrictive Covenant will contain a general provision regarding the election but will not list unit designation specifics.
9. Owners of developments with more than one building must indicate on the Forms 8609 to treat all of them as part of a multiple building project (checking "Yes" on line 8b).
10. DCA will monitor properties' compliance at least annually. The monitoring fee is \$1,000 per unit.
11. Absent IRS guidance to the contrary, DCA will not report a property as failing the IA minimum set-aside so long as 40% of the total units comply with their respective designations, and those designations average to 60%.
12. Properties that select the average income set-aside are subject to additional requirements for both property management staff education and reporting. Such properties must have written policies and procedures addressing recertification, transfer requests, and waitlists.

**C. In addition to the requirements above, requests to change set-aside before the issuance of 8609s must include the following:**

1. An updated DCA Core Application reflecting all designations/changes.
2. A matrix showing the AMI percentage(s) for each designated unit type.
3. A legal opinion stating IA will be compatible with the requirements of all other anticipated funding sources (excluding market-rate loans) and project-based operating assistance (if applicable).
4. A new or revised market study showing adequate demand for all possible combinations of unit sizes and percent limits.

***DCA MAY AMEND THIS POLICY OR MAKE EXCEPTIONS AS NECESSARY.***